

### **REMARKS**

Responsive to the final Office Action dated February 11, 2008 and the Advisory Action mailed June 3, 2008, the present amendment is being filed concurrently with a Request for Continued Examination (RCE) under 37 C.F.R. §1.114, and a Petition for (One-Month) Extension of Time submitted contemporaneously herewith. By the present amendment, Claims 1-12 remain pending. Claims 13-41 were withdrawn from consideration by earlier response to a restriction requirement. Claims 1 and 11 have been amended by the present response and to clarify the scope of the claimed inventions of claims 1 and 11. The present amendment amends independent claim 1 to clarify that the claimed invention can include “at least one sensor operable to detect the consumer’s presence in proximity to the product container, wherein the at least one display is operable to output customized marketing content based at least in part on the consumer’s presence” (Underlining supplied). The cited references neither disclose or suggest the amended element of claims 1 and 11. Reconsideration of the amended claims and application is respectfully requested in view of the remarks below.

### **Claim Rejections Under 35 U.S.C. § 103**

In the non-final Office Action, claims 1 - 7 and 10 - 12 were rejected under 35 U.S.C. §103(a) as being obvious over Abell, U.S. Patent Publication No. 2003/0172028 (“*Abell*”) in view of Walker, U.S. Patent Publication No. 2003/0172028 (“*Walker*”). Independent claim 1 has been amended to clarify that the claimed invention can include “at least one sensor operable to detect the consumer’s presence in proximity to the product container, wherein the at least one display is operable to output customized marketing content based at least in part on the consumer’s presence” (Underlining supplied). The amendment is supported by the Applicants’ specification in at least, for example, Paragraphs [0047] – [0048] as follows: “According to one aspect of the invention, marketing content displayed on the display 205 is based in part on the presence or absence of a consumer near the AIPC 200. ... According to one embodiment of the invention, the at least one sensor 230 is capable of communicating with an active or passive RF tag or smart card near the AIPC 200. This permits the AIPC 200 to not only identify the general

presence of a person, but to access content on the RF tag or smart card, such as the identity of a consumer. Additional material that may be received from a smart card or RF tag may include information such as a consumer's purchase history, which may be used to customized content shown on the display of the AIPC as the consumer approaches it." Furthermore, the amendment is supported by the Applicants' specification in at least, for example, Paragraph [0049] as follows: "For instance, upon the motion detector 230 detecting the presence of a consumer, the digital camera 215 may take a picture that is incorporated into media content displayed on the display 205."

The cited references, *Abell* and *Walker*, neither disclose or suggest the amended element, "at least one sensor operable to detect the consumer's presence in proximity to the product container, wherein the at least one display is operable to output customized marketing content based at least in part on the consumer's presence". The Office Action relies on *Walker* to allegedly disclose the prior claim element "at least one sensor operable to detect the consumer's presence in proximity to the product container, wherein the at least one display is operable to output content based at least in part on the consumer's presence." See page 4. However, *Walker* appears to relate to sensing a physical presence for the purpose of basing a price change in a product to be dispensed. See Paragraph [0065]. *Walker* does not teach or suggest output of customized marketing content based at least in part on a consumer's presence.

Both *Abell* and *Walker* appear to be concerned with either pricing or authorizing payments for a product purchase, whereas the Applicants' claimed invention relates to an interactive networked product container. See Abstract. As explained in the Applicants' Background, conventional product containers generally have no mechanisms to capture and hold a consumer's attention for any length of time other than a fixed brand or product displays presented by the product container. See Paragraph [0003]. Such product containers provide no added benefits or features other than to provide consumers with access to products. *Id.* Both *Abell* and *Walker* appear to have similar deficiencies as conventional product containers since there is no mechanism or device to capture and hold a consumer's attention for any length of time. For example, with the vending machine in *Walker*, the pricing for a product may fluctuate

with the number of people, i.e. an increase in foot traffic could trigger an increase in price and impede a decrease in price. See *Walker*, Paragraph [0065]. If the price for the product suddenly increases due to the amount of foot traffic, the consumers' attention and desire for the product being sold may actually decrease depending on the price increase. Therefore, the vending machine of *Walker* appears to teach away from the use of any content to attract customers since a greater the number of prospective customers who may be near the *Walker* vending machine may trigger a product price increase which may decrease customers' attention in the product or otherwise decrease the number of customers who desire to purchase the product since the product has increased in price.

For at least the reasons provided above, the cited references, either alone or in combination with each other do not teach or disclose each and every element of amended independent claim 1, and therefore amended claim 1 should be allowable over the cited references.

Claims 2 - 7, and 10 -12 are ultimately dependent from claim 1, for which arguments of patentability have been provided above. If independent claim 1 is in condition for allowance, then dependent claims 2 - 7 and 10 - 12 should also be in condition for allowance.

Claims 8 and 9 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Abell* in view of *Walker*, in further view of Pons, U.S. Patent Publication No. 2002/0099608 ("*Pons*"). Since claims 8 and 9 are ultimately dependent from independent claim 1, for which arguments of patentability have been provided above, if claim 1 is in condition for allowance, then dependent claims 8 and 9 should also be in condition for allowance.

#### **Claim Rejections Under 35 U.S.C. § 112**

Claims 1 and 2 were rejected under 35 U.S.C. § 112 as not particularly pointing and distinctly claiming the subject matter which the applicant regards as his invention. Claim 1 was rejected for insufficient antecedent basis for this limitation in the claim, and claims 2 - 12, being dependent on claim 1, thus acquire the deficiencies as set forth in claim 1. To clarify the scope

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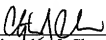
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of claim 1, claim 1 has been amended by the present response to clarify the antecedent basis of “vicinity”, and this rejection is believed to be traversed.

**CONCLUSION**

It is not believed that additional extensions of time or fees for addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 19-5029.

Respectfully submitted,

  
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